

9/14/2017 1:08 pm

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK  
LONG ISLAND OFFICE

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ROBERT BOWEN,

**ORDER**

15-CV-6829 (JMA) (GRB)

Plaintiff,

v.

BALDWIN UNION FREE SCHOOL  
DISTRICT and THE BOARD OF EDUCATION  
OF THE BALDWIN UNION FREE SCHOOL  
DISTRICT,

Defendants.  
\_\_\_\_\_X

**AZRACK, United States District Judge:**

Before the Court are defendants' timely objections to Magistrate Judge Gary R. Brown's Report and Recommendation ("R&R"), in which Judge Brown recommended that the Court:

1. dismiss without prejudice plaintiff's unpaid overtime claim pursuant to the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 207(a)(1);
2. dismiss without prejudice plaintiff's unpaid overtime claim pursuant to New York Labor Law ("NYLL") § 663 and New York Code of Rules and Regulations § 142-2.2;
3. dismiss with prejudice plaintiff's retaliation claim pursuant to the FLSA, 29 U.S.C. 215(a)(3);
4. dismiss with prejudice plaintiff's retaliation claim pursuant to the NYLL § 215;
5. sua sponte dismiss with prejudice plaintiff's due process claim under the Fourteenth Amendment;
6. deny defendants' motion to dismiss plaintiff's due process claim under § 1983; and
7. dismiss without prejudice plaintiff's remaining state law claims.

Having reviewed defendants' objections and the underlying motion papers, the Court adopts Judge Brown's R&R in its entirety.

In reviewing a magistrate judge's report and recommendation, a court must "make a de novo determination of those portions of the report or . . . recommendations to which objection[s][are] made." 28 U.S.C. § 636(b)(1); see also Brown v. Ebert, No. 05–CV–5579, 2006 WL 3851152, at \*2 (S.D.N.Y. Dec. 29, 2006). The court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). Those portions of a report and recommendation to which there is no specific reasoned objection are reviewed for clear error. See Pall Corp. v. Entegris, Inc., 249 F.R.D. 48, 51 (E.D.N.Y. 2008).

The Court has reviewed Judge Brown's recommendations to which the parties did not specifically object. I find that these portions of the R&R contain no clear error, and I adopt those recommendations.

Defendants object to Judge Brown's recommendation that certain claims be dismissed without prejudice and that plaintiff be granted leave to amend his overtime claims and all of his state law claims concerning the filing of a notice of claim. Upon de novo review, the Court agrees with Judge Brown and overrules these objections. Defendants also object to Judge Brown's decision not to address defendants' alternative arguments for dismissal of plaintiff's state law claims. Again, upon de novo review, the Court agrees with Judge Brown and declines to reach these arguments at this time. Defendants may reassert these alternative arguments in a subsequent motion to dismiss.

In conclusion, the Court overrules defendants' objections and adopts the R&R in its entirety as the opinion of the Court. Plaintiff must file an amended complaint by September 28, 2017.

**SO ORDERED.**

Dated: September 14, 2017  
Central Islip, New York

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/s/ (JMA)  
JOAN M. AZRACK  
UNITED STATES DISTRICT JUDGE